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April 4, 2007

Marlene H. Dortch
Secretary
Federal Communications Commission
445 – 12th Street, SW
Washington, DC 20554

Re: *Ex Parte Presentation* – WT Docket No. 06-150
700 MHz Band Commercial Spectrum Proceeding

Dear Ms. Dortch:

Verizon Wireless submits this ex parte presentation in the *700 MHz Band Commercial Spectrum* proceeding to oppose (1) a "keep what you use" re-licensing mechanism, and (2) construction benchmarks keyed to geographic service coverage.[1]

Adoption of either of these approaches would mark a radical reversal of the Commission's highly successful market-oriented spectrum policies. There is no factual record justifying these mandates. To the contrary, these unprecedented obligations would cause uneconomic, skeletal buildouts just to avoid regulatory sanctions, rather than to meet market demands, to the detriment of consumers.

The FCC's current market-based policies have fueled an exponential growth of wireless and succeeded in extending wireless service to rural areas. "Keep what you use" mechanisms and geographic-based construction benchmarks, which deviate from these policies, are solutions in search of a problem and should be rejected. Further, in light of the Commission's findings as to the expansion of wireless deployment into rural areas and the existence of spectrum opportunities in a competitive, well-functioning market, these mandates are unnecessary and would serve neither consumers nor competition.

Geographic Coverage and "Keep What You Use" Mandates Would Conflict with the FCC's Implementation of the Communications Act and its Market-Driven Policies for CMRS. The Commission is not writing on a blank slate here. It needs to

[1] *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands,* Notice of Proposed Rule Making Fourth Further Notice of Proposed Rule Making, and Second Further Notice of Proposed Rule Making, 21 FCC Rcd 9345, 9375-76 (2006) ("*700 MHz Commercial Band Notice*").

keep in mind three overarching and long-settled policies, grounded in the Communications Act, that are the building blocks of CMRS regulatory policies. Those policies in turn have led to the unequalled growth of CMRS and its contributions to the American economy.

First, in the 1993 revisions to Title III of the Act, "Congress amended the Act to reflect a 'general preference in favor of reliance on market forces rather than regulation.' Congress limited CMRS regulation to situations 'for which the Commission and the states could demonstrate a clear-cut need.'"[2] This means that a new mandate must have a clear factual record justifying it, such as evidence of market failure or a need for new obligations such as Enhanced 911.

Second, the Commission also recognized the critical importance of regulatory "parity" across CMRS services. More than a decade ago, it declared that Congress "mandated that similar commercial mobile radio services be accorded similar regulatory treatment under the Commission's Rules. The broad goal of this action is to ensure that economic forces – not disparate regulatory burdens – shape the development of the CMRS marketplace."[3] For over a decade the Commission has acted to harmonize its regulations for cellular, SMR, PCS, and other services.

Third, in the area of performance requirements for auctioned wireless services, the FCC has consistently adhered to these deregulatory policies, finding that its goals are best achieved by allowing licensees flexibility to meet consumer demands for wireless services rather than by imposing rigid performance requirements.[4] Less than two years ago, it rejected new performance requirements for CMRS, and in fact removed the specific mandate that 30 MHz PCS licensees and many other licensees must meet inflexible coverage requirements, instead relying on a substantial service requirement and a set of safe harbors.[5]

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[2] Brief for the United States as Amicus Curiae at 3, *Hatch v. Cellco Partnership*, 127 S. Ct. 433 (No. 05-1159) 2006 WL 2668196 (citation omitted).

[3] *Implementation of Sections 3(n) and 332 of the Communications Act,* Third Report and Order, 9 FCC Rcd 7988, 7994 (1993).

[4] Attached to this letter is a chart of the spectrum auctions that the Commission has conducted for Wireless Radio Services as defined in Section 1.907 of the Commission's rules, 47 C.F.R. § 1.907, listing the performance requirements imposed on licensees for each service. *See* Attachment. The chart demonstrates that, through more than 50 auctions, the FCC has never required a geographic coverage construction benchmark. The Commission has also not imposed a use it or lose it requirement for auctioned spectrum except in two limited instances of cellular auctions conducted under the original cellular service rules. Moreover, as the chart reflects, the Commission has transitioned from the command-and-control buildout requirements for numerous auctioned services to a substantial service requirement, or at the very least, a substantial service option.

[5] *See Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies to Provide Spectrum-Based Services*, Report and Order and Further Notice

Given these policies – policies the FCC has itself pointed to for the success of the CMRS industry – those who advocate geographic buildout and use it or lose it mandates have a very heavy burden to justify them. They first must explain what the "clear-cut need" is that can only be addressed by these mandates. They then must show why creating "regulatory disparity" among competing services – disparity that would exist even within the 700 MHz band – will not skew the market, counter to Congress' goal to achieve consistent, symmetrical rules. Finally, they must explain why the Commission should, at this time, and for these new licenses, reverse its settled policy for flexible performance requirements for auctioned wireless services. None of these showings has been made.

"Keep What You Use" and Geographic-Based Benchmarks Address No Defined Market Failure or Other Problem. The record does not identify the problem that either a "keep what you use" or a "geographic-based benchmark" policy would address. The *700 MHz Commercial Band Notice* does not inquire as to whether one exists, but merely asks whether "a benchmark based on geography . . . would be more effective in promoting service to underserved areas without offsetting disadvantages," and whether a "keep what you use" policy would be "an effective means to provide additional service, including in rural areas" and "an efficient way to provide spectrum access to other potential service providers."[6] The record contains no evidence of a problem in need of a "keep what you use" or "geography-based benchmark" solution. To the contrary, ample data substantiates the extensive and expanding nature of wireless services in rural areas, as well as the widespread and increasing availability of spectrum for entities interested in providing wireless services in rural areas.

The few proponents of "keep what you use" or geographic-based benchmarks do not identify, let alone document, any such problem. They merely advocate, without factual support, a command-and-control approach that had been used for the rollout of cellular service in the mid-1980s – a period of regulated duopoly where both licenses were granted for free and the government sought to spur initial buildout or to create opportunities for competition where none existed. These conditions do not exist today. A "keep what you use" or geographic-based benchmark presumes a market that will not respond to consumer demand or that has a dearth of available spectrum for new entrants. Neither is the case, as described below.

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of Proposed Rulemaking, 19 FCC Rcd 19078, 19120-22 (2004) ("*Rural Wireless Report and Order*") (extending the substantial service construction option to the 30 MHz broadband PCS licensees, 800 MHz SMR licensees – blocks A, B, and C, certain 220 MHz licensees, Location Monitoring Service licensees, and 700 MHz public safety licensees).

[6] *700 MHz Commercial Band Notice*, 21 FCC Rcd at 9376.

There is No Market Failure Warranting These New Mandates. As the Commission has acknowledged year after year in its reports to Congress, the CMRS market is highly competitive. And with respect to rural areas, there is no evidence of market failure or harm to consumers. To the contrary, the Commission recently declared that there is no need to equate a lower number of providers in rural areas with a less competitive or robust wireless market. In the *Eleventh CMRS Competition Report*, the Commission concluded, "Despite the smaller number of mobile operators in rural areas as compared to urban areas, there is no evidence in the record to indicate that this structural difference has enabled carriers in rural areas to raise prices above competitive levels or to alter other terms and conditions of service to the detriment of rural consumers."[7] In fact, wireless providers continue to extend service deeper and deeper into rural areas, as demonstrated below.

Service to Rural Areas Is Not Blocked by Lack of Spectrum. Some suggest the Commission should adopt "keep what you use" or benchmark requirements because spectrum should not be allowed to lie fallow in rural areas. This argument ignores the simple fact that, in most rural areas, it is not economically feasible to put every last hertz of spectrum into use according to a government-mandated timetable. Verizon Wireless respectfully submits that the more appropriate question is whether services to rural areas are being denied or unreasonably delayed because interested entities lack access to spectrum. The answer is: No.

In late 2004, in a proceeding specifically addressing wireless services in rural areas, the Commission concluded that its current policies "are working to provide wireless services in rural areas."[8] The Commission confirmed this conclusion in September 2006, finding that rural counties (*i.e.*, counties with 100 or fewer persons per square mile) have an average of 3.6 mobile competitors – up from 3.3 competitors three years earlier.[9] To the extent the Commission is concerned about areas that lack service or have only one provider, the cellular unserved area rule ensures that spectrum is readily available for any entity interested in introducing service. Of course, some areas of the country are so remote that they are unlikely ever to be served by terrestrial wireless networks. For example, federal lands (*e.g.*, national forests, parks, wilderness areas,

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[7] *Implementation of Section 6002(b) of the Omnibus Reconciliation Act of 1993*, Eleventh Report, 21 FCC Rcd 10947, 10983 (2006) ("*Eleventh CMRS Competition Report*").

[8] *Rural Wireless Report and Order*, 19 FCC Rcd at 19081.

[9] *See Eleventh CMRS Competition Report*, 21 FCC Rcd at 10982 (average number of 3.6 competing carriers in rural areas); *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993*, Eighth Report, 18 FCC Rcd 14783, 14836 (2003) (average number of 3.3 competing carriers in rural areas).

mountain ranges, military proving grounds, *etc.*) comprise some 650 million acres and constitute approximately 28.9% of the total land mass of the United States.[10]

Marketplace dynamics – not prescriptive regulation – have worked to extend service in rural areas. Wireless carriers build out where people are. Indeed, rural wireless coverage has continued to expand and investment in rural areas has continued to grow exponentially – long after the original cellular licensees were required to build out their networks or lose parts of their geographic area licenses. Specifically, in 2006 the Commission found that "98 percent of the total U.S. population have three or more different operators (cellular, PCS and/or digital SMR) offering mobile telephone service in the counties in which they live,"[11] up from 88 % in 2000.[12] This growth has occurred in arguably the most difficult areas to serve, both technically and economically, as a result of market forces, not regulation.

Commission Policies Offer Numerous Ways to Gain Access to Spectrum in Rural Areas. There is no evidence in this proceeding or any other to indicate that a shortage of available spectrum is blocking the deployment of commercial wireless services in rural areas. Indeed, barriers to entry in the rural market are much lower today than they were in the days of the cellular duopoly, as there is far more spectrum available and more ways to access it. As the Commission has recognized, "*access to spectrum does not appear to be a substantial barrier to entry in RSAs.*"[13]

With respect to spectrum in the market today, there is the 50 MHz of cellular spectrum, 120 MHz of Broadband PCS spectrum, and approximately 10 MHz of Enhanced SMR spectrum. Emerging spectrum bands will nearly double the amount of spectrum in use today – the 90 MHz of spectrum auctioned last year in the AWS-1 band and the 84 MHz of spectrum in the 700 MHz band that will become fully accessible after the DTV transition, February 17, 2009. Further, the 196 MHz of newly re-constituted BRS/EBS spectrum and the 30 MHz of WCS spectrum add even more spectrum to the market. In addition to the available licensed spectrum, the Commission's unlicensed policy makes hundreds of megahertz of spectrum available in these markets without any barriers to entry for new entrepreneurs. The Commission also has decided to allow

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[10] *See* GSA Office of Governmentwide Policy, *Federal Real Property Profile as of September 30, 2004*, at 18 (2004) ("*Federal Real Property Profile as of September 30, 2004*"), *available at* http://www.gsa.gov/realpropertyprofile.

[11] *Eleventh CMRS Competition Report*, 21 FCC Rcd at 10964 (citation omitted).

[12] *See Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993*, Fifth Report, 15 FCC Rcd 17660, 17665 (2000).

[13] *2000 Biennial Review – Spectrum Aggregation Limits for Commercial Mobile Radio Services,* Report and Order, 16 FCC Rcd 22668, 22691 (2001) (emphasis added).

wireless devices to operate in TV White Space spectrum after February 17, 2009.[14] Furthermore, the Commission has put aside over 100 MHz of prime spectrum for mobile satellite systems with the explicit goal of enabling multiple providers to offer ubiquitous coverage in rural America.

The Commission's secondary market policies – which permit partitioning and disaggregation of spectrum as well as spectrum leasing – have worked to further reduce barriers to rural deployment. For example, the Commission's Universal Licensing System lists 586 non-pro forma, partitioning and/or disaggregation applications involving one or more PCS licenses consummated since 1998.[15] In addition, hundreds of spectrum leasing arrangements, each involving one or more call signs, have been granted or accepted since 2004, or have otherwise taken effect. In both instances, parties can select whole counties or define even smaller areas using geographic coordinates.[16] For example, Verizon Wireless recently agreed to sell part of a PCS license in Kentucky to a rural carrier, who intends to deploy new service.[17]

The fundamental barrier to rural deployment is economic – not the nature of a performance requirement. Verizon Wireless, and other major carriers, have built out or partnered with other carriers to expand over vast new swaths of territory because it makes economic sense to do so. And indeed the success of the U.S. regulatory model – and the foundation for the Commission's decision not to adopt "keep what you use" for auctioned CMRS licenses and instead rely on substantial service performance requirements – was based on the finding that economic incentives combined with lower entry barriers would best enhance coverage and competition. There is no ground to reverse that finding here.

Other Tools Are Better Suited to Address Rural Deployment. In extending a substantial service requirement to other licensees, the Commission recently concluded that this approach would promote service by carriers to rural areas, by "increas[ing] their flexibility to develop rural-focused business plans and deploy spectrum-based services in more sparsely populated areas without being bound to concrete population or geographic coverage requirements."[18] The Commission's substantial service safe harbors, moreover, provide increased certainty for how carriers can meet the substantial service requirement through deployment in rural areas. For example, the Commission adopted as a safe harbor coverage of 75 % of the geographic area of at least 20 % of the rural areas in the

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[14] *See Unlicensed Operation in the TV Broadcast Bands; Additional Spectrum for Unlicensed Devices Below 900 MHz and in the 3 GHz Band*, First Report and Order, 21 FCC Rcd 12266, 12275 (2006).

[15] *See*, http://wireless2.fcc.gov/UlsApp/ApplicationSearch (last viewed Apr. 3, 2007).

[16] *See, e.g.*, 47 C.F.R. § 24.714(b).

[17] Application of Cellco Partnership and East Kentucky Network, LLC, File No. 0002954535, filed March 29, 2007.

[18] *Rural Wireless Report and Order*, 19 FCC Rcd at 19121.

licensed area.[19] The Commission stated: "By adopting substantial service 'safe harbors,' as well as providing examples of the sorts of factors we will consider in evaluating substantial service showings, we believe we satisfactorily balance the competing interest of maximizing licensee flexibility while providing some measure of certainty."[20]

Verizon Wireless has previously suggested adopting a similar approach for the 700 MHz spectrum, in which the Commission would define substantial service through alternative "safe harbors," that would provide certainty to licensees while allowing flexibility in how best to serve a particular market and differentiate their wireless service from competitors. For example, the Commission could adopt the percentage population coverage approach in Section 24.203 of the PCS rules, and the safe harbors adopted in the *Rural Wireless Report and Order* to encourage service to areas of markets with lower population densities or particular users.[21] The Commission has other policies that have further lowered the barriers to rural deployments, including more flexible technical rules, diverse licensing approaches, rural buildout safe harbors, the revised tribal land bidding credit, and universal service and rural telehealth policies. Many of these approaches have only recently been adopted and available for use by licensees.

To the extent that the Commission feels the current pace of deployment in rural America still lags behind its goals, then it would be far more effective to use the direct economic tools at the Commission's disposal, rather than a policy of seizing unbuilt spectrum. For example, the FCC could award bidding credits for carriers who choose to meet their substantial service requirement through the rural area safe harbor. Or the FCC could develop a program similar to programs available to rural utilities, designed to target areas for wireless investment.

"Keep What You Use" Would Distort Competition, Force Premature and Uneconomic Buildout, and Harm Consumer Welfare. Adoption of this mandate would not only be unnecessary but would harm the public interest in a number of ways. It would disturb the competitive wireless market and force carriers to make uneconomic investments to the detriment of consumer welfare.

Carriers have a discrete amount of capital to invest in infrastructure, and a "keep what you use" policy would send investment to markets where it is not justified and limit full investment in markets where it is. This distorts competition and leads to inferior service, as areas with growing demand are subject to artificially low investment, while

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[19] *Id.* at 19123.

[20] *Id.* at 19124.

[21] *Ex Parte* Letter to Marlene Dortch, Secretary, FCC, from Michael P. Samsock, Verizon Wireless, WT Docket No. 06-150, filed January 31, 2007.

"forced" build areas may end up with bare bones networks that project minimal signal over the entire service area.

Under this mandate, carriers will determine their buildout not by where consumer demand exists or where they can best differentiate themselves from their competitors – the right incentives – but by where they need to be to cover a certain percentage of land. Worse, such builds may result in the fourth or fifth basic wireless voice network in a rural market instead of delivering broadband connectivity to markets with significant demand – perhaps a rural market with no broadband capability. Carriers will need to cover land that they may not be prepared to serve by the deadline, solely to preserve the licensed area for future expansion of coverage when they have the capital or the consumer demand for that broader coverage.[22]

By way of comparison, when the FCC acted recently to help ensure that competition is brought to the multichannel video marketplace, it found that a local franchising authority's refusal to award a competitive franchise on the grounds that the applicant would not agree to specified buildout requirements could be unlawful.[23] The Commission noted that new entrants in the cable market face markedly different competitive conditions that incumbent monopoly cable operators, and recognized that "[b]uild-out requirements . . . impose significant financial risks on competitive applicants, who must incur substantial construction costs to deploy facilities . . . in exchange for the opportunity to capture a relatively small percentage of the market."[24] Similarly, new licensees in the highly competitive wireless market should not be subjected to unprecedented mandates.

Moreover, on a purely practical level, a "keep what you use" regime will not advance a policy goal of putting unused spectrum immediately into use. If an area is unserved at a particular point in the license term, it is not reasonable to think that re-auctioning a license for just that area will produce a licensee willing to provide service there.[25] Instead, the existing license holder, provided it satisfies the substantial service

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[22] The increased cost of devoting scarce capital to building out areas with no unmet demand is not a cost that can be offset by decreasing auction prices. Putting aside the inadvisability of imposing mandates that could depress bidding prices, bidders typically base their bids on "'MHz/POP" data for different markets, not on costs to build to a particular geography. Moreover, auction bidding in reality is driven largely by competing demands by bidders, and network buildout costs typically far exceed spectrum acquisition costs. In short, there is no basis to assume that the auction process will somehow compensate for a geographic buildout rule.

[23] *See Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992*, Report and Order and Further Notice of Proposed Rulemaking, FCC 06-180, at ¶¶ 87-91 (rel. March 5, 2007).

[24] *Id.* at ¶ 88.

[25] Proponents of "keep what you use" presume that "others who have a plan" to serve unserved areas will somehow materialize in a re-auction, but they have offered no evidence for this claim.

requirement, should retain the spectrum, thereby providing encouragement to the carrier with the greatest synergies and lowest entry barriers (adjacent markets, harmonized spectrum) to deploy service as soon as it becomes economically efficient to do so. The tremendous growth in coverage and investment in recent years provides ample evidence of this dynamic and should serve as proof that today's policies are working to drive substantial investment.

"Keep What You Use" Would Have Significant Implementation Problems. Finally, the Commission would find implementation of "keep what you use" very difficult. The Commission seeks comment on "how 'use' could or should be defined."[26] At this stage of development in the wireless marketplace, it is hard to imagine that the Commission wants to debate with each individual carrier what it means to "use" its spectrum for purposes of retaining its license. The Commission would have to require licensees to submit reams of information to determine what geographic areas were in fact "unused," which would be administratively burdensome on both licensees and the FCC. This is the exact type of intrusive, complex, and fact specific regulation that the Commission has rightly discarded.

The Commission's experience with the cellular unserved licensing regime – a regime that was repeatedly litigated in the courts – warns against a new mandate that draws the FCC into disputes over precisely how much "land" is covered by the licensee or would be covered by the new entrant. It was hard enough even when all cellular carriers used a single technology, analog, and service areas were measured by a single mathematical formula included in the rules. This is not possible today, given the proliferation of varying technologies, including but not limited to CDMA and GSM, and the many ways to determine reliable coverage. In such a regime, the Commission and its staff would be tied up in innumerable disputes about precisely where license "lines" exist. Given the imprecision inherent in wireless coverage, erecting a new regulatory regime to police radio propagation boundaries would impose large costs and delays without any apparent benefit.

A "triggered keep what you use" approach whereby spectrum would be reclaimed "only in the event a party other than the licensee (*e.g.*, a spectrum lessee) seeks access to the licensed spectrum in an unserved portion of the license area,"[27] would suffer from the same problems. This approach, like the standard proposal, fundamentally undermines the secondary market for spectrum that the Commission has worked so hard to foster. A triggered keep what you use mechanism would reduce the incentive for an entity interested in spectrum in an area to strike a market-based arrangement to access the spectrum; instead, that party would be more inclined to see if it could obtain the spectrum through this regulatory mandate. As demonstrated above, the secondary market for

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[26] *700 MHz Commercial Band Notice*, 21 FCC Rcd at 9376.

[27] *Id.*

spectrum is functioning well and there is no evidence of an eager but unfulfilled spectrum market. Plus, this concept would create the same technical implementation problems discussed above and mire the FCC in disputes over wireless coverage.

Geography-Based Construction Benchmarks Are Counterproductive. A few parties believe that geography-based construction requirements are needed "to assure that licensees are motivated to serve rural areas in a reasonably prompt manner."[28] This argument is misguided in several ways. As noted above, licensees who acquire licenses at auction are presumed to have an incentive to put the spectrum to its best and highest use, deploying service where the marketplace dictates that it makes economic sense to do so. The record, moreover, demonstrates that wireless providers are increasingly serving rural markets. The Commission should be extremely reluctant to substitute its judgment for the market's, especially where evidence of market failure is lacking.

The Commission has never before mandated a geographic-based buildout requirement, and adoption here would be counterproductive both for consumers and for competition. As with a "keep what you use" regime, geographic benchmarks would force licensees to invest in service deployment according to an arbitrary schedule set by regulation, diverting investment from uses where the marketplace would suggest greater consumer gain could be achieved. The record provides no factual support for such a major departure from longstanding policy.

Geographic-based construction requirements would also have to grapple with what to do about the vast federal and state land holdings. Many of these lands are unpopulated or very sparsely populated national and state forests and wilderness areas, but they are included in licensed service areas and presumably would be included in buildout calculations. According to the U.S. General Services Administration, in twelve Western states, federal lands account for more than 30% of the land mass.[29] Construction of wireless service in these areas is, as the Commission knows, extremely difficult due to agency restrictions and other legal obstacles. Would these areas be included in any geographic build mandate? If so, how?

Moreover, a geographic build mandate would fail to take into account the stark disparities in population densities that exist in the United States. For example, according to 2000 Census data, 50% of the population lives in the most densely populated counties

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[28] Reply Comments of Rural Cellular Association, WT Docket No. 06-150, at 6-7 (filed Oct. 20, 2006); *see also* Comments of the Vermont Department of Public Service, Public Service Board *et al.*, WT Docket No. 06-150, at 6-8 (filed Sept. 29, 2006).

[29] *See Federal Real Property Profile as of September 30, 2004*, at 19-20, *supra* n. 8.

in the country covering only 3% of the geographic area of the nation.[30] Even if Alaska is excluded from that calculation, these counties still cover only 3.5% of the area. Only 5% of the population lives in the least densely populated counties that cover more than 55% of the total area of the United States, even if Alaska is excluded.

The unevenness of population is also revealed by specific county data. Out of 3, 141 counties, more than 500 have population densities of less than 10 people per square mile, and nearly 400 have population densities of less than 5 people per square mile. Yet many of these counties encompass large geographic areas. For example, the Denver Economic Area comprises 50 counties and, according to Verizon Wireless' most recent estimates, currently has a population of 4.3 million.[31] Fully 90% of the population of the Denver EA occupies only one quarter of the geographic area of the EA.

No licensee should be forced to divert scarce capital into areas where it is uneconomic to provide additional wireless service, but that is precisely the result that would come from geographic-based construction benchmarks Particularly given the lack of a factual record as to why geographic-based mandates solve any specific problem, the Commission should not adopt them.

Canada Has Not Adopted These Mandates, Relying Instead on Flexible Rules. Canada, like the United States, is a country whose population is unevenly distributed over a large landmass, many of whose citizens live in sparsely populated areas. Thus, it is instructive to look at Canadian policies on wireless service performance requirements.

In its most recent auction of comparable spectrum, the Canadian Department of Industry ("Industry Canada" or the "Department") auctioned 56 PCS licenses (4-10 MHz licenses in each of 14 regions). The Department determined that its objective of national coverage of cellular service was being met, and that it was confident that "both market forces and the policy measures currently in place will see the continuation of further national coverage."[32] Given that finding, the Department did not impose a national roll-out requirement on the licenses it auctioned in 2001. Licensees must "demonstrate that their spectrum is being put to use at a level acceptable to the Department within five years of the auction's close."[33] (Section 4.7.1) The Department recognized that different

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[30] *See* U.S. Department of Census, *Population, Housing Units, Area, and Density for Counties: 2000* at http://www.census.gov/population/www/censusdata/density.html.

[31] 2006 population estimates are based on marketing and demographic data purchased from EGS Technologies Corp (http://egstech.com/), which extrapolates its population data from census data.

[32] Industry Canada, *Policy and Licensing Procedures for the Auction of Additional PCS Spectrum in the 2 GHz Frequency Range*, at 15 (June 28, 2000) *available at* http://strategis.ic.gc.ca/epic/site/smt-gst.nsf/vwapj/10.1e.pdf/$FILE/10.1e.pdf.

[33] *Id.*

carriers might employ different business plans and technologies in these bands across markets of various sizes and stated that:

> In order to be technology-neutral and service-neutral, the Department is reluctant to specify service roll-out requirements in terms of specific technical measures. In fact, there may be a number of measures that will demonstrate an acceptable level of spectrum usage. One example of what could be considered an acceptable level of spectrum usage would be the establishment of coverage of at least 50% of the population within a service area within five years.[34]

In February 2007, the Department published its Consultation on the licensing procedures for its Advanced Wireless Services in the 2 GHz Range seeking comment on the appropriate rules for its AWS licenses.[35] It has proposed a ten year license term with no defined buildout requirement and no mid term or interim review. In order to renew its license, at year eight a licensee would need to provide a description of its geographic coverage and population served, at which point the Department would determine if the licensee had provided "a satisfactory demonstration of substantial service in the licence area."[36] Here again, Canada proposes to follow its existing flexible policies for wireless service. The Commission should, similarly, follow its successful existing policies.

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For all the reasons outlined above, Verizon Wireless urges the Commission not to adopt a "keep what you use" re-licensing mechanism or a geographic-based construction requirement for the commercial 700 MHz band.

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[34] *Id.*

[35] Industry Canada, *Consultation on a Framework to Auction Spectrum in the 2 GHz Range including Advanced Wireless Services,* DGTP-002-07 (February 2007) *available at* http://strategis.ic.gc.ca/epic/site/smt-gst.nsf/vwapj/aws-consultation-e.pdf/$FILE/aws-consultation-e.pdf.

[36] *Id.* at 34.

Pursuant to Section 1.1206(b)(2) of the Commission's rules, an electronic copy of this letter is being filed for inclusion in the above-referenced docket. Please direct any questions regarding this filing to the undersigned.

Sincerely,

John T. Scott, III

John T. Scott, III

cc: Erika Olsen
Bruce Gottlieb
Barry Ohlson
Aaron Goldberger
Angela Giancarlo
Fred Campbell
Jim Schlichting
Paul D'Ari
Paul Murray
Wayne Leighton

ATTACHMENT

Auction No. Wireless Radio Service	Performance Requirements
Auction 72 220 MHz Scheduled to Begin on 6/20/07	Phase II EA and regional licensees must provide coverage to 1/3 of population within 5 yrs and 2/3 of population within 10 yrs or alternatively provide substantial service within the appropriate 5 or 10 yr benchmarks.
Auction 71 Broadband PCS Scheduled to Begin on 5/16/07	**30 MHz blocks**: Provide coverage to 1/3 of population within 5 yrs and 2/3 of population within 10 yrs or alternatively provide substantial service within the appropriate 5 or 10 yr benchmarks. **10 or 15 MHz blocks**: Provide coverage to 1/4 of population within 5 yrs or make a showing of substantial service.
Auction 69 1.4 GHz Bands Closed on 3/8/07	Must make a showing of substantial service in the license area within 10 yrs of the initial license grant date.
Auction 66 Advanced Wireless Services (AWS-1) Closed on 9/18/06	Must make a showing of substantial service in the license area within the prescribed license term.
Auction 65 800 MHz Air-Ground Radiotelephone Service Closed 6/2/06	Licensees authorized to use more than 1 MHz of the spectrum allocation must make a showing of substantial service within 5 yrs of the license grant.
Auction 63 Multichannel Video Distribution & Data Service Closed on 12/7/05	Must provide substantial service within 5 yrs of the initial license grant. Licensees have a renewal expectancy based on a showing of substantial service at the end of 5 yrs into the license period and 10 yrs into the license period.
Auction 61 Automated Maritime Telecommunications System Closed on 8/17/05	Must make a showing of substantial service in the license area within 10 yrs of the initial license grant date.
Auction 60 Lower 700 MHz Band Closed on 7/26/05	Must make a showing of substantial service in the service area before the end of the license term.
Auction 59 Multiple Address Systems Closed on 5/18/05	Must provide service to at least 1/5 of the population in its service area or substantial service within 5 yrs of the license grant and must make a showing of continued substantial service within 10 yrs of the license grant.
Auction 58 Broadband PCS Closed on 2/15/05	**30 MHz blocks**: Provide coverage to 1/3 of population within 5 yrs and 2/3 of population within 10 yrs or alternatively provide substantial service within the appropriate 5 or 10 yr benchmarks. **10 or 15 MHz blocks**: Provide coverage to 1/4 of population within 5 yrs or make a showing of substantial service.

Auction No. Wireless Radio Service	Performance Requirements
Auction 57 Automated Maritime Telecommunications System Closed on 9/15/04	Must make a showing of substantial service in the license area within 10 yrs of the initial license grant date.
Auction 56 24 GHz Service Closed on 7/28/04	Must make a showing of substantial service in the license area within 10 yrs of the initial license grant date.
Auction 55 900 MHz SMR Service Closed on 2/25/04	Must provide coverage to 1/3 of service area population in 3 yrs; 2/3 of service area population in 5 yrs. Alternatively, the licensee can show substantial service only at the 5 yr mark.
Auction 53 Multichannel Video Distribution Data Service Closed on 1/27/04	Must provide substantial service within 5 yrs of the initial license grant. Licensees have a renewal expectancy based on a showing of substantial service at the end of 5 and 10 yrs into the license period.
Auction 51 Regional Narrowband PCS Closed on 9/25/03	Required to provide coverage to a composite area of 150,000 square kilometers or serve 37.5% of the population of the service area within 5 yrs of the initial license grant date; and, provide coverage to a composite area of 300,000 square kilometers or serve 75% of the service area population within 10 yrs. Licensees may alternatively provide substantial service to the licensed area within 10 yrs of license grant.
Auction 50 Narrowband PCS Closed on 9/29/03	Required to provide coverage to a composite area of 75,000 square kilometers, or 25% of the geographic area, or 37.5% of the population of the service area within 5 yrs of the initial license grant date; and, provide coverage to a composite area of 150,000 square kilometers, or 50% of the geographic area, or serve 75% of the service area population within 10 yrs. Licensees may alternatively provide substantial service to the licensed area within 10 yrs of license grant.
Auction 49 Lower 700 MHz Band Closed on 6/13/03	Must make a showing of substantial service in the service area before the end of the license term.
Auction 48 Lower and Upper Paging Bands Closed on 5/28/03	Must provide coverage to 1/3 of population in 3 yrs; 2/3 of population in 5 yrs. Alternatively, at the 5 yr mark, the licensee can show substantial service.
Auction 46 1670-1675 MHz Band Nationwide License Closed on 4/30/03	Must make a showing of substantial service in the service area before the end of the license term.
Auction 45 Cellular RSA Closed on 6/4/02	Licensees are given 5 yrs from the date of their initial grant to build out their cellular system within the market. After 5 yrs, any remaining area not covered by the licensee is considered "unserved area," and is subject to re-licensing.

Auction No. Wireless Radio Service	Performance Requirements
Auction 44 Lower 700 MHz Band Closed on 9/18/02	Must make a showing of substantial service in the service area before the end of the license term.
Auction 43 Multi-Radio Service (220 MHz and 800 MHz SMR) Closed on 1/17/02	**220 MHz**: Phase II EA and regional licensees are required to provide coverage to 1/3 of the population within 5 yrs and at least 2/3 of the population within 10 yrs. Under certain circumstances, licensees could meet construction requirements by providing substantial service. As of 2/14/05, all EA and regional licensees can alternatively provide substantial service to their licensed areas at the appropriate 5 and 10 yr benchmarks. **800 MHz SMR**: EA licensees are required to provide coverage to 1/3 of the population within 3 yrs and at least 2/3 of the population within 5 yrs. EA licensees of D-V blocks can alternatively provide substantial service within 5 yrs of the initial license grant.
Auction 42 Multiple Address Systems Closed on 11/27/01	Must provide service to at least 1/5 of the population in its service area or substantial service within 5 yrs of the license grant and must make a showing of continued substantial service within 10 yrs of the license grant.
Auction 41 Narrowband PCS Closed on 10/16/01	Nationwide licensees must provide coverage to 750,000 square kilometers or serve 37.5% of the U.S. population within 5 yrs of initial license grant; and, provide coverage to 1,500,000 square kilometers or serve 75% of the U.S. population within 10 yrs of initial license grant. MTA licensees must provide coverage to 75,000 square kilometers or 25% of the geographic area, or serve 37.5% of the population of the service area within 5 yrs of the initial license grant; and, provide coverage to 150,000 square kilometers or 50% of the geographic area, or serve 75% of the population of the service area within 10 yrs of the initial license grant. In the alternative, nationwide or MTA licensees may provide substantial service to the licensed area within 10 yrs of license grant.
Auction No. 40 Paging Closed on 12/5/01	Must provide coverage to 1/3 of population in 3 yrs; 2/3 of population in 5 yrs. Alternatively, at the 5 yr mark, the licensee can show substantial service.
Auction 39 VHF Public Coast and Location and Monitoring Services (LMS) Closed on 6/13/01	**VHF Public Coast**: Must make a showing of substantial service in the license area within 5 and 10 yrs of the initial license grant date. **LMS**: Must provide coverage using multilateration technology to provide multilateration LMS to 1/3 of the population within 5 yrs of initial license grant and 2/3 of the population within 10 yrs. As of 2/14/05, licensees can alternatively provide substantial service within the appropriate 5 and 10 yr benchmarks.

Auction No. Wireless Radio Service	Performance Requirements
Auction 38 Upper 700 MHz Guard Bands Closed on 2/21/01	Must provide substantial service no later than 1/1/15. A Guard Band Manager may satisfy the substantial service requirement by leasing the predominant amount of its licensed spectrum in at least 50% of the geographic area covered by its license or by providing coverage to 50% of the population of its service area at the license-renewal mark.
Auction 36 800 MHz SMR Lower 80 Channels Service Closed on 12/5/00	EA licensees are required to provide coverage to 1/3 of the population within 3 yrs and at least 2/3 of the population within 5 yrs. EA licensees of D-V blocks can alternatively provide substantial service within 5 yrs of the initial license grant.
Auction 35 C and F Block Broadband PCS Closed on 1/26/01	Provide coverage to 1/4 of population within 5 yrs or make a showing of substantial service.
Auction 34 800 MHz SMR General Category Service Closed on 9/1/00	EA licensees are required to provide coverage to 1/3 of the population within 3 yrs and at least 2/3 of the population within 5 yrs. EA licensees of D-V blocks can alternatively provide substantial service within 5 yrs of the initial license grant. EA licensees in the upper 200 channels (Blocks A, B, and C) are required to provide coverage to 1/3 of the population within 3 yrs and at least 2/3 of the population within 5 yrs. In addition, licensees subject to channel usage requirement (50% of the total channels constructed in at least one location). As of 2/14/05, EA-based licensees can alternatively provide substantial service within 5 yrs of the initial license grant in lieu of population coverage benchmarks.
Auction 33 Upper 700 MHz Guard Bands Closed on 9/21/00	Must provide substantial service no later than 1/1/15. A Guard Band Manager may satisfy the substantial service requirement by leasing the predominant amount of its licensed spectrum in at least 50% of the geographic area covered by its license or by providing coverage to 50% of the population of its service area at the license-renewal mark.
Auction 30 39 GHz Closed on 5/8/00	Must show substantial service at time of license renewal.
Auction 26 929 and 931 MHz Paging Service Closed on 3/2/00	Must provide coverage to 1/3 of population in 3 yrs; 2/3 of population in 5 yrs. Alternatively, at the 5 yr mark, the licensee can show substantial service.

Auction No. Wireless Radio Service	Performance Requirements
Auction 24 220 MHz Closed on 6/30/99	Phase II EA and regional licensees are required to provide coverage to 1/3 of the population within 5 yrs and at least 2/3 of the population within 10 yrs. Under certain circumstances, licensees could meet construction requirements by providing substantial service. As of 2/14/05, all EA and regional licensees can alternatively provide substantial service to their licensed areas at the appropriate 5 and 10 yr benchmarks.
Auction 23 Local Multipoint Distribution Service Re-Auction Closed on 5/12/99	Must make a showing of substantial service in the service area before the end of the 10 yr license term.
Auction 22 C, D, E, and F Block Broadband PCS Closed on 4/15/99	**30 MHz blocks**: Provide coverage to 1/3 of population within 5 yrs and 2/3 of population within 10 yrs. As of 2/14/05, licensees can alternatively provide substantial service within the appropriate 5 or 10 yr benchmarks. **10 or 15 MHz blocks**: Provide coverage to 1/4 of population within 5 yrs or make a showing of substantial service.
Auction 21 Location Monitoring Service Closed on 3/5/99	Must provide coverage using multilateration technology to provide multilateration LMS to 1/3 of the population within 5 yrs of initial license grant and 2/3 of the population within 10 yrs. As of 2/14/05, licensees can alternatively provide substantial service within the appropriate 5 and 10 yr benchmarks.
Auction 20 VHF Public Coast Closed on 12/14/98	Must make a showing of substantial service in the license area within 5 and 10 yrs of the initial license grant date.
Auction 18 220 MHz Closed on 10/22/98	Phase II EA and regional licensees are required to provide coverage to 1/3 of the population within 5 yrs and at least 2/3 of the population within 10 yrs. Under certain circumstances, licensees could meet construction requirements by providing substantial service. As of 2/14/05, all EA and regional licensees can alternatively provide substantial service to their licensed areas at the appropriate 5 and 10 yr benchmarks. Phase II nationwide licensees are required to provide coverage to a composite area of at least 750,000 square kilometers or 37.5% of the U.S. population within 5 yrs of the issuance of its initial license and a composite area of at least 1,500,000 square kilometers or 75% of the U.S. population within 10 yrs of the issuance of its initial license. Licensees offering fixed services were allowed to meet 5 and 10 yr benchmarks through substantial service. As of 2/14/05, all nationwide licensees may alternatively provide substantial service to their licensed areas at the appropriate five- and ten-year benchmarks.

Auction No. Wireless Radio Service	Performance Requirements
Auction 17 Local Multipoint Distribution Service Closed on 3/25/98	Must make a showing of substantial service in the service area before the end of the 10 yr license term.
Auction 16 800 MHz SMR Service Closed on 12/8/97	EA licensees in the upper 200 channels (Blocks A, B, and C) are required to provide coverage to 1/3 of the population within 3 yrs and at least 2/3 of the population within 5 yrs. In addition, licensees subject to channel usage requirement (50% of the total channels constructed in at least one location). As of 2/14/05, EA-based licensees can alternatively provide substantial service within 5 yrs of the initial license grant in lieu of population coverage benchmarks.
Auction 14 Wireless Communications Services Closed on 4/25/97	Must make a showing of substantial service in the license area within 10 yrs of the initial license grant date.
Auction 12 Cellular Unserved Closed on 1/21/97	Must begin service to subscribers within 1 yr of grant; any unserved area remaining after construction period expires becomes available for relicensing.
Auction 11 Broadband PCS D, E, & F Block Closed on 1/14/97	Provide coverage to 1/4 of population within 5 yrs or make a showing of substantial service.
Auction 10 Broadband PCS C Block Reauction Closed on 7/16/96	Provide coverage to 1/3 of population within 5 yrs and 2/3 of population within 10 yrs. As of 2/14/05, licensees can alternatively provide substantial service within the appropriate 5 or 10 yr benchmarks.
Auction 7 900 MHz SMR Service Closed on 4/15/96	Must provide coverage to 1/3 of service area population in 3 yrs; 2/3 of service area population in 5 yrs. Alternatively, the licensee can show substantial service only at the 5 yr mark.
Auction 6 Multipoint/Multichannel Distribution Services (n/k/a the Broadband Radio Service) Closed on 3/28/96	Must provide service to 2/3 of the population within 5 yrs or area unserved in market will be relicensed. As of 7/19/06, licensees must make a showing of substantial service no later than May 1, 2011. A licensee is deemed to provide substantial service if: (i) providing 6 permanent links per 1 million people; (ii) serving at least 30% of the population; (iii) providing service to "rural areas" as defined by FCC (for mobile service, 75% of geographic area or 30% of rural areas – for fixed service, if one end of permanent link constructed in 30% of rural areas; (iv) providing a specialized or technologically sophisticated service that does not require a high level of coverage to benefit consumers; or (v) providing service to niche markets or areas outside the areas served by other licensees.
Auction 5 Broadband PCS C Block Closed on 5/6/96	Provide coverage to 1/3 of population within 5 yrs and 2/3 of population within 10 yrs. As of 2/14/05, licensees can alternatively provide substantial service within the appropriate 5 or 10 yr benchmarks.

Auction No. Wireless Radio Service	Performance Requirements
Auction 4 Broadband PCS A and B Block Closed on 3/13/95	Provide coverage to 1/3 of population within 5 yrs and 2/3 of population within 10 yrs. As of 2/14/05, licensees can alternatively provide substantial service within the appropriate 5 or 10 yr benchmarks.
Auction 3 Regional Narrowband PCS Closed on 11/8/94	Licensees are required to provide coverage to a composite area of 150,000 square kilometers or serve 37.5% of the population of the service area within 5 yrs of the initial license grant date; and, provide coverage to a composite area of 300,000 square kilometers or serve 75% of the service area population within 10 yrs. As of 8/7/00, licensees may alternatively provide substantial service to the licensed area within 10 yrs of license grant.
Auction 2 Interactive Video and Data Services (n/k/a 218-219 MHz) Closed on 7/29/94	Must make service available to at least 10% of the population or geographic area within 1 yr of the license grant, 30% within 3 yrs, and 50% within 5 yrs. Rules changed in 1/96 so that licensees must make service available to at least 30% of the population or land area within 3 yrs of grant, and 50% of the population or land area within 5 yrs of grant. Rules changed in 9/99 so that licensees must only make a showing of substantial service in the license area within 10 yrs of the initial license grant date.
Auction 1 Nationwide Narrowband PCS Closed on 7/29/94	Nationwide licensees must provide coverage to 750,000 square kilometers or serve 37.5% of the U.S. population within 5 yrs of initial license grant; and, provide coverage to 1,500,000 square kilometers or serve 75% of the U.S. population within 10 yrs of initial license grant. As of 8/7/00, licensees may alternatively provide substantial service to the licensed area within 10 yrs of license grant.